

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-11-AT-0001
Comcast of Alabama, Inc.)	
)	NAL/Acct. No. 201132480003
Cable system in Florence, AL)	
)	FRN 0003251717
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 6, 2011

Released: June 7, 2011

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Comcast of Alabama, Inc., (“Comcast”), operator of a cable television system in Florence, Alabama, apparently willfully and repeatedly violated sections 11.35(a) and 11.51(h) of the Commission’s rules (“Rules”)¹ by failing to ensure that emergency alerts system (“EAS”) messages were transmitted properly to certain customers. We conclude that Comcast is apparently liable for a forfeiture in the amount of sixteen thousand dollars (\$16,000).

II. BACKGROUND

2. On January 3, 2011, the Enforcement Bureau’s Atlanta Office (“Atlanta Office”) received a complaint that a Comcast customer in Florence, Alabama did not receive a transmitted EAS alert during an actual emergency. On January 4, 2011, an agent from the Atlanta Office contacted Comcast about the complaint. On February 23, 2011, the Atlanta Office issued a Letter of Inquiry (“LOI”) to Comcast to determine why the alert was not received by the customer.²

3. In a reply to the LOI, Comcast admitted that two classes of customers in the Florence system failed to receive EAS visual and audio message for slightly more than 7 months and 4 months, respectively, in parts of 2010 and 2011.³ Comcast was, however, passing through the EAS alerts for the Florence system, and the majority of customers would have received the alerts.⁴ Comcast attributed the failure to employee mistakes in configuring headend equipment during a digital upgrade for the Florence

¹ 47 C.F.R. §§ 11.35(a), 11.51(h).

² See Letter from Douglas G. Miller, District Director, Atlanta Office, to Comcast Cable of Alabama, Inc., February 23, 2011.

³ See Letter from Catherine Fox, Senior Counsel, Comcast Cable Communications, LLC, to Douglas G. Miller, District Director, Atlanta Office, March 16, 2011, at 4 (“Comcast LOI Response”). Comcast requested confidential treatment for the entire response to the LOI. Comcast subsequently limited its request for confidential treatment. See Email from Catherine Fox, Senior Counsel, Comcast Cable Communications, LLC, to Diane Law-Hsu, Regional Counsel, South Central Region, May 25, 2011.

⁴ *Id.*

system.⁵ Comcast stated that it did conduct weekly and monthly EAS tests during this period, but its technicians observed the weekly and monthly EAS tests on equipment not impacted by the error and were unaware of the problem until January 4, 2011.⁶ The error was corrected on January 5, 2011, and all customers in the Florence system can now receive EAS alerts.⁷

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁸ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹⁰ and the Commission has so interpreted the term in the section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

6. Every analog and digital cable system is part of the nationwide EAS network and is categorized as a participating national EAS source unless the system affirmatively requests authority to refrain from participation, and that request is approved by the Commission.¹⁴ The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.¹⁵ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁶ Required monthly and weekly tests originate from

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

¹¹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹² See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁴ 47 C.F.R. §§ 11.11, 11.41.

¹⁵ 47 C.F.R. §§ 11.1, 11.21.

¹⁶ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, (continued....)

EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that regulatees play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees.

7. Section 11.35(a) of the Rules requires all EAS participants to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed so that the monitoring and transmitting functions are available during the times the systems are in operation.¹⁷ Section 11.51(h) of the Rules requires analog and digital cable systems to transmit required EAS audio and visual messages on all downstream channels.¹⁸ Digital cable systems may comply with this requirement by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.¹⁹ Although Comcast had working EAS encoders and decoders installed at its cable headend, Comcast admits that two classes of customers served by the Florence, Alabama system were unable to receive EAS visual and audio messages for several months in 2010 and 2011. Comcast admits that it failed to properly configure headend equipment such that this subset of customers was unable to access the EAS messaging channel. Therefore, for these customers, Comcast's EAS equipment was effectively non-existent. Because Comcast consciously operated its system and that system's EAS was not functioning properly for all customers, we find the apparent violation to be willful. Because Comcast failed to maintain fully operational EAS on more than one day, we find the apparent violation to be repeated. Based on the evidence before us, we find that Comcast apparently willfully and repeatedly violated sections 11.35(a) and 11.51(h) of the Rules by failing to ensure that its EAS equipment was fully functional for all customers.

9. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for EAS equipment not installed or operational is \$8,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²¹ We recognize that Comcast is a multi-billion dollar enterprise.²² To ensure that forfeiture liability is a deterrent and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies, such as Comcast, should expect the assessment of higher forfeitures for violations.²³ Based on these factors, we find that \$8,000 (to \$16,000) is an appropriate

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emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹⁷ 47 C.F.R. § 11.35(a).

¹⁸ 47 C.F.R. § 11.51(h).

¹⁹ 47 C.F.R. § 11.51(h)(5).

²⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 503(b)(2)(E).

²² Currently, Comcast is ranked 59 on the Fortune 500 list of Largest American Corporations, with reported revenues of more than \$35.7 billion. See <http://money.cnn.com/magazines/fortune/fortune500/2010/snapshots/5035.html> (last visited April 8, 2011).

²³ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly

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upward adjustment for Comcast's apparent violations. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Comcast is apparently liable for a \$16,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, Comcast of Alabama, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for violations of sections 11.35(a) and 11.51(h) of the Rules.²⁴

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Comcast of Alabama, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Comcast will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. Comcast shall mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd, Suite 320, Duluth, GA, 30096 and include the NAL/Acct. No. referenced in the caption. Comcast also shall email the written response to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial

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profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount).

²⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35(a), 11.51(h).

⁸ See 47 C.F.R. § 1.1914.

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Comcast of Alabama, Inc. at One Comcast Center, Philadelphia, PA 19103.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau